

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 5851 OF 2015.

IN THE MATTER OF:

An application under Article 102 of
the Constitution of the People's
Republic of Bangladesh.

-AND -

IN THE MATTER OF:

Md. Abdur Rashid and others
... Petitioners

-VS-

Judge, Artha Rin Adalat-3, Dhaka and
others

.....Respondents

Mr. Mr. Probir Neogi, Senior
Advocate, with

Mr. Suvro Chakroborty, Advocates

.....For the Petitioners

Mr. Md. Khalilur Rahman Bhuiyan,
Advocate

... For the respondent No. 2

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Sardar Md. Rashed Jahangir

Heard on: 06.5.2024.

Judgment on : 03.07.2024.

Zafar Ahmed, J.

In the instant writ petition, this Court issued a Rule Nisi
on 31.05.2015 calling upon the respondent Nos. 1-3 to show

cause as to why the impugned order No. 82 dated 08.03.2015 passed by the Artha Rin Adalat-3, Dhaka in Miscellaneous Case No. 16 of 2012 under Order XXI rule 58 of the Code of Civil Procedure (C.P.C.) read with Section 32 of Artha Rin Adalat Ain, 2003 rejecting the miscellaneous case and confiscating the security furnished by the petitioners equivalent to 10% of the decretal amount (Annexure-A) should not be declared to have been made without lawful authority and is of no legal effect.

At the time of issuance of the Rule Nisi, this Court passed an interim order of status-quo in respect of the case property.

Respondent No. 2 Janata Bank Ltd. contested the Rule by filing an affidavit-in-opposition.

Be it mentioned at the outset that the petitioners are 3rd party and they are not parties to the Artha Rin Suit and Artha Jari proceedings. The respondent No. 2 Bank filed Artha Rin Suit No. 281 of 2004 before the Artha Rin Adalat No. 3, Dhaka for realization of Tk. 30,16,003.80. Land measuring 99 decimals under different plots and buildings constructed thereon situated at Savar, Dhaka were kept mortgaged by the sole defendant-respondent No. 3 against the loan in question.

The suit was decreed on contest on 30.09.2004 in preliminary form. The Bank filed Artha Jari Case No. 220 of 2005 on 19.06.2005. Eventually, the executing Adalat passed an order for issuance of sale certificate under Section 33(5) of the Artha Rin Adalat Ain, 2003 in favour of the Bank in respect of the mortgaged property. The said sale certificate was issued on 10.01.2010.

Meanwhile, the present petitioners, who are 3rd party, filed Title Suit No. 279 of 2005 on 04.07.2005 before the Court of Senior Assistant Judge, Savar, Dhaka impleading the judgment debtor, the Bank and others as defendants for a decree in respect of lands including a portion of land which was the mortgaged property in the Artha Rin Suit and also for setting aside the registered sale deeds in questions.

Having learnt about issuance of the sale certificate in the Artha Jari Case, the present petitioners filed Miscellaneous Case No. 16 of 2012 on 27.06.2012 before the Artha Rin Adalat, 3rd Court, Dhaka under Order XXI rule 58 of the C.P.C. read with Section 32 of the Artha Rin Adalat Ain for recalling the said sale certificate and for releasing the property in question. The Bank filed written objection in the miscellaneous case. The sole judgment debtor did not enter appearance in the

miscellaneous case. The Adalat, vide Order No. 82 dated 08.03.2015 rejected the miscellaneous case. Challenging the same, the 3rd party petitioners filed the instant writ petition, obtained Rule and order of status-quo.

In *Bank of Small Industries & Commerce Bangladesh vs. Shahabuddin Ahmed*, 64 DLR 241, which is cited by the learned Advocate appearing for the petitioners, it has been held:

“According to Order XXI Rule 58 of the Code of Civil Procedure such a claim and objection against attached property are to be verified and investigated by examining the claimants and in all other respects, as if they are party to a suit. Thus, it was incumbent upon the Court below to examine witness and admit documents in proof of the alleged claim on the disputed land after obtaining evidence, decision in this regard is necessary to be arrived at”.

In the instant miscellaneous case, the learned Judge of the Adalat neither framed issues nor examined the parties and documents produced by them. In view of the reported case, the impugned order No. 82 dated 08.03.2015 cannot be treated as an order passed in accordance with law. Therefore, the same is liable to set aside. Hence, the Rule succeeds.

Be that as it may, it appears from Annexure-X2 which is a certificate dated 16.05.2024 issued by the respondent No. 2 Janata Bank annexed to the affidavit-in-opposition filed by the Bank that in the meantime the judgment debtor had paid substantial amount of the claim of the Bank and the outstanding liability to be paid by the judgment debtor as on 16.05.2024 stood at Tk. 1,87,297.00 along with cost.

In the result, the Rule is made absolute. The impugned order No. 82 dated 08.03.2015 passed by the Artha Rin Adalat No. 3, Dhaka in Miscellaneous Case No. 16 of 2012 arising out of Artha Jari Case No. 220 of 2005 is set aside. The Miscellaneous Case No. 16 of 2012 is sent back on remand to the concerned Adalat for holding further investigation and providing opportunity to the parties to examine witness and to adduce documentary evidence and dispose of the case expeditiously in accordance with law.

Sardar Md. Rashed Jahangir, J.

I agree.